IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO.1282 OF 2005

Aba Bapu Lohar ...Appellant
Vs.
Ganpati Bapu Lohar & Ors. ...Respondents

Mr.R.V.More for the Appellant
None for the Respondents.

CORAM: A.S.OKA, J.
DATED: MARCH 27,2006.

P.C.:

1. Heard Shri More for the Appellant-oriignal Plaintiff. A suit filed by the Appellant-Plaintiff for partition and separate possession has been dismissed by the Trial court and the decree of the Trial Court has been confirmed by the Appellate court.

2. Shri More for the Appellant submitted that the original defendant No.2 came out with a case that oral partition is effected which is not consistent with the revenue record. He pointed out that the original defendant No.1 supported the original Plaintiff by submitting that there was a partition by metes and bounds. He, therefore, submitted that the Courts below committed an error in accepting the case made out by the Defendant No.2 of oral partition.

3. After having considered the submissions and after having perused the findings recorded by the courts below, it is not possible to come to the conclusion that there is no partition

between the parties.

4. The Courts below have noted that the Appellant-Plaintiff accepted the position that the parties were enjoying the separate portions of the suit property. The courts below noted that the case of the Appellant was that the separate possession was only for their convenience and there was no partition effected by metes and bounds.

5. The Courts below have accepted the case made out by the defendant No.2 that there was a partition between the members of the family and on the basis of the partition, the parties were in separate possession of the properties. The Appellate court also noted that deed of reconveyance was executed at the instance of the original defendant No.1 during the pendency of the suit only with a view to create evidence that there was no partition. The defendant No.1 has not stepped into the witness box.

6. Considering all these factors, the case made out by the Defendant No.2 is accepted by the courts below especially after considering the case made out by the Appellant that the parties are enjoying the separate possession of the distinct properties.

7. No case for interference is made out. Second appeal is dismissed with no order as to costs.

Judge.